



Prop 207 Smart & Safe Act FAQ Document (11-20-2020)

GENERAL QUESTIONS

- **When will the Department of Health Services begin its rule-making process?**
 - Unknown. The League is in contact with DHS and will notify municipalities when DHS begins to promulgate rules.
- **How does Prop 207 affect school Drug-Free Zones?**
 - Prop 207 itself does not mention drug-free zones. Drug free zones in Arizona are established under A.R.S. § 13-3411, which imposes an additional one year onto the sentence of someone convicted of a drug crime within 300 feet of a school. Under medical marijuana law, A.R.S. § 36-2804(B)(1)(ii) says that medical marijuana dispensaries must be 500 feet away from a school. For both statutes the distance is measure from the boundary of the school property, not the buildings themselves. See [JH2K I LLC v. Arizona Dept. of Health Servs., 438 P.3d 676, 680 \(Ct. App. 2019\)](#). There is federal law on the subject – 28 U.S.C § 860 doubles the punishment for a drug crime occurring within 1000 feet of a school.
- **Can a locality establish a more stringent drug-free zone for recreational marijuana than state law?**
 - Probably not. The language in A.R.S. § 36-2857 that says a locality can't enact an ordinance more restrictive than a comparable ordinance that applies to medical marijuana facilities would seem to say that A.R.S. § 36-2804 limiting dispensaries within 500 feet of a school is the most restrictive a locality can be. The locality can enact a zoning ordinance that has the effect of limiting retail marijuana within that 500-foot zone but likely cannot have an ordinance specifically limiting retail in a more restrictive manner.
- **Will a marijuana delivery would be taxed at the point of sale, or the point of delivery? In other words, if a dispensary in City A delivers marijuana to a resident in City B, which city collects the TPT for that transaction?**
 - Sales by in-state sellers is always sourced to the city the seller is located in regardless of delivery.
- **In regard to the money from the excise tax that will fund various state agencies and be dispersed between community college districts, police and fire departments, and the Highway User fund – how is that proposed to work? Does a set percentage go to all police and fire? Is it possible they will exclude cities that do not allow sales?**
 - The portion designated for HURF becomes part of the distribution pool and is sent to all cities as part of the regular distribution method, with or without marijuana sales in a given city.
 - Collections of the statewide portion designated for PSPRS go to all cities with members in that retirement plan, based on the proportionate number of active members enrolled by that city, again regardless of whether they have marijuana sales. Cities that do not have police or fire employees in the PSPRS system do not receive a distribution from this portion of the excise tax.

- No other funding from the excise tax is shared with cities and towns.
 - Cities and towns collect their regular Retail TPT on any sales to end users that occur at dispensaries in their city. Cities cannot impose a different tax rate on sales of marijuana.
 - Prop 301 (0.6%), County Retail TPT, and State Retail TPT (5%) also apply to all such sales, and the additional State tax revenue is included in the normal state shared TPT pool, which is distributed based on population. Forty (40%) of Retail TPT goes into the pool, and cities and towns receive 25% of the pool, so cities and towns effectively receive 10% of the state TPT collected on all Marijuana sales (both medical and recreational).
 - Sales between farms, indoor grows, processing facilities and dispensaries are exempt sales for resale, and as such are not subject to TPT or the excise tax.
 - Cities and towns with farms or grow facilities are advised to enter into development agreements if they wish to receive revenue from such operations to impose charges scaled to the size and type of operation.
- **Are there any projections from state agencies (or neutral source) about the monies generated from this Act?**
 - There have been no projections at least not from the DOR, JLBC, or other disinterested source.
- **Can a locality require that marijuana businesses disallow firearms?**
 - Prop 207 does not specifically mention firearms. A.R.S. § 13-3102(A)(10) disallows carrying a firearm into a public establishment or public event where the operator has made a reasonable request for the carrier to leave. There is no law in the state which prohibits carrying firearms into medical marijuana establishments, pharmacies, or other similar businesses. Prohibition on firearms will be up to individual business owners to create and enforce.
- **How will the expungement process work?**
 - The Act specifies that the courts have until July 2021, to set-up the expungement program. The court process will outline how a person files the petition to expunge, the court's review process and how to manage the records if the matter is expunged. There may be court rules enacted and some administrative orders.
 - While there are many questions relating to the Act's implementation, one challenge is how to conform with federal law and this Act's requirements to seal records that are in shared databases. A police legal advisors' group is reviewing the issue and may have more information early next year (2021).